

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAUL C. BOLIN,)	Case No. C.V. F-99-5279-REC-P
)	
Petitioner,)	<u>DEATH PENALTY CASE</u>
)	
vs.)	ORDER FOLLOWING CASE MANAGEMENT
)	CONFERENCE
J. D. STOKES, As Acting)	
Warden of San Quentin State)	DATE: August 22, 2005
Prison,)	TIME: 1:00 p.m.
)	COURTROOM ONE
Respondent.)	
_____)	

This matter came on for hearing for a Case Management Conference in the above-entitled Court on August 22, 2005 at 1:00 p.m., the Honorable Robert E. Coyle presiding. Petitioner Paul C. Bolin ("Bolin") was represented by Assistant Federal Defender Allison Claire and private attorney Robert D. Bacon. Respondent J.D. Stokes, As Acting Warden of San Quentin State Prison (the "Warden") was represented by Stephanie A. Mitchell. All counsel appeared telephonically.

The purpose of the Case Management Conference was to determine and discuss progress in review of the case since counsel for both parties are relatively new. Bolin's counsel informed the Court they are still reviewing boxes of materials recently made available by Bolin's former counsel. At this point in the proceedings, Bolin is

1 not able to say with conviction whether any new claims will be
2 asserted in state or federal court. A second and more immediate
3 purpose for the Case Management Conference was to ascertain whether
4 the parties had come to a conclusion about the exhaustion status of
5 Bolin's First Amended Petition (the "Petition") filed January 19,
6 2005.

7 Initially, the Warden maintained in his Answer¹ that four claims
8 in the Petition were unexhausted. Following a telephonic "meet and
9 confer" between counsel,² the Warden has recognized that the Court
10 already ruled on three of these four claims, finding the exhaustion
11 requirement satisfied in an order issued November 28, 2000. The
12 parties now agree that the exhaustion status of only one claim in the
13 Petition is in dispute.

14 According to prior Court order, the parties are to file a joint
15 statement setting forth their respective positions concerning the
16 exhaustion status of the Petition no later than September 12, 2005.
17 Since only one claim is in dispute, the joint statement will be
18 concomitantly abbreviated. First, the joint statement will identify
19 the operative law applicable to exhaustion. The parties are directed
20 not to spend a great deal of time and effort on this portion of the
21 joint statement, as the law governing exhaustion is settled.³ Second,
22 the Warden shall state whether the disputed claim is contended to be
23 factually unexhausted, legally unexhausted, or both. Finally, Bolin
24 shall explain why he contends the exhaustion requirement is satisfied,

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26 ¹ The Warden's Answer was filed June 17, 2005.

27 ² The "meet and confer" requirement was imposed by Court order.

28 ³ It's the application of the settled legal principles that
requires the greatest effort.

1 either by identifying where in the state petition or direct appeal
2 proceedings the disputed claim was raised before the California
3 Supreme Court, or by presenting other grounds for satisfaction of
4 exhaustion.

5 Following review of the joint statement, the Court either will
6 issue an order resolving the exhaustion dispute, or request further
7 briefing in advance of deciding the exhaustion dispute. Once the
8 exhaustion status of the Petition is determined, the case will move
9 into Phase III of the litigation, which is the briefing stage. See
10 Guide to Case Management and Budgeting in Capital Habeas Cases.⁴ The
11 Court will advise the parties of the anticipated Phase III Case
12 Management Conference contemporaneous with resolving the exhaustion
13 dispute.

14 After discussion the above topics on the record, the Court then
15 excused Ms. Mitchell so the hearing could proceed to confidential
16 budgeting matters. Under 21 U.S.C. §848(q)(9), ex parte consideration
17 of budgeting and funding matters requires a petitioner to make a
18 showing of the need for confidentiality. The Court finds that since
19 budget applications require disclosure of matters protected by the
20 attorney-client and/or work product privileges, the need for
21 confidentiality is inherent in the budgeting process. See
22 Fed.R.Civ.P. 26(b)(3). The ex parte proceedings have been reported
23 and any memorialization of those proceedings will be maintained under
24 seal. An order summarizing the ex parte proceedings is filed under
25 seal concurrently with this order.

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28 ⁴ The Guide to Case Management and Budgeting in Capital Habeas
Cases is available on the Court's web page.

1 In light of the foregoing, the parties shall file a joint
2 statement setting forth their respective positions concerning the
3 exhaustion status of one claim for which they do not agree exhaustion
4 is satisfied. The joint statement shall be electronically filed with
5 the Court no later than September 12, 2005. Thereafter the Court will
6 address the exhaustion dispute and notify the parties of its decision.
7 The Court will further notify the parties of the commencement of Phase
8 III of the litigation.

9
10 IT IS SO ORDERED.

11
12 Dated: August 24, 2005

/s/ Robert E. Coyle
Robert E. Coyle
United States District Judge